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# THE RELATION OF COUNTY TO CITY GOVERNMENT IN NEW YORK<sup>1</sup>

BY ARTHUR LUDINGTON

*New York City*

The problem created by the overlapping of county and city governments is not as acute in New York City as in many of the large cities of this country for the reason that—except in so far as the administration of justice is concerned, and except for the fact that certain separate county officers are expressly provided for by the constitution for purposes more or less directly connected with the administration of justice—the governments of the four counties within New York City have been almost wholly consolidated with, and merged in, that of the city.

In order that the provisions by which this result has been accomplished may be more clearly understood and the present position of the four counties more intelligently presented, it will be worth while to trace briefly the history of these counties, prior to the creation of

<sup>1</sup> The principal sources of information as to the governments of the four metropolitan counties, and as to their relation with the government of New York city are (1) the Greater New York Charter of 1897 (L. 1897, Ch. 378, as amended by L. 1901, Ch. 466; Ash's 1906 edition, with annual supplements) and the supplementary act as to boards of supervisors (L. 1897, Ch. 380); (2) the so-called "Consolidation Act" of 1882—a consolidation of all the previous laws relating to the city and county of New York (L. 1882, Ch. 410; Ash's edition); and (3) numerous other acts of the legislature, many of them special acts (the most important of these are referred to in the footnotes below). In tracing these various acts of the legislature relating to New York City, and to New York, Kings, Queens and Richmond counties, Baxter's "General Index to the Laws of the State of New York, 1777-1901," with a supplement covering the years 1902 to 1907 inclusive, and Silvernail's "Index to the Session Laws of the State of New York, 1775-1897" may conveniently be referred to. For the earlier history of New York City and county the following compilations are also useful: "Laws Relating to the City and County of New York," by Murray Hoffman, 3 vols., N. Y., 1865-9; "Laws of the State of New York relating particularly to the City of New York," by David T. Valentine, N. Y. 1862; "A Compilation of the Laws of the State of New York relating particularly to the City of New York," by Henry E. Davies, New York, 1885. "Leslie's History of Greater New York," by Daniel Van Pelt, 3 vols., N. Y., 1898, also contains some material on this general subject.

the present city in 1896, and their relation to the cities which previously existed within the limits of Greater New York.

First, then, let us see what were the boundaries at various periods of the four metropolitan counties and of the earlier cities of New York, Brooklyn and Long Island City. The earliest of these political divisions to receive corporate existence were the counties—New York, Kings, Queens and Richmond—all of which were among the ten original counties created by the first colonial legislature in 1683.<sup>2</sup> The boundaries of New York county were the same as those of the original New York City—which at that time, however, had not yet received any charter—and comprised only Manhattan Island, a number of smaller neighboring islands and several of the ferries to Long Island. The first charter of New York City, the so-called Dongan charter granted in 1686, made no mention of New York county, created three years before, but gave the city the same boundaries as this county. Thereafter—for example in the Montgomerie charter of 1730—the two were generally referred to together under the title of “The City and County of New York.” Their boundaries also continued to be identical. Except for a few minor changes in these boundary lines, the limits of the city and county remained unaltered from 1686 until 1873, when the towns of Morrisania, West Farms and Kingsbridge were taken from the county of Westchester<sup>3</sup> and made a part of the city and county of New York. In 1895, after the question of the formation of the present Greater New York had been submitted to the voters of the various counties, cities, villages and towns affected, but before the actual consolidation, parts of certain other towns and villages of Westchester county, all but one of which had voted in favor of the proposed consolidation, were joined to and merged with the original city and county of New York.<sup>4</sup>

The second of the four counties established in 1683—Kings county—comprised the whole southwestern corner of Long Island. Brooklyn—or Breuckelen, as it was then called—was only one of the towns within this county. It was not until 1834 that it became incorporated as a city.<sup>5</sup> In 1851 Williamsburgh, in the adjoining town of Bushwick, was also incorporated as a city,<sup>6</sup> and in 1854 both Williamsburgh and the town of Bushwick were consolidated with the city of

<sup>2</sup> Cf. also L. 1788, Chs. 63 and 64.

<sup>3</sup> L. 1873, Ch. 613.

<sup>4</sup> L. 1895, Ch. 934.

<sup>5</sup> L. 1834, Ch. 92.

<sup>6</sup> L. 1851, Ch. 91.

Brooklyn.<sup>7</sup> In 1894 the remaining towns of Kings county—Flatbush<sup>8</sup>, New Utrecht,<sup>9</sup> Gravesend,<sup>10</sup> and Flatlands<sup>11</sup>—were also consolidated with Brooklyn, and the city thus became territorially identical with Kings county.

By 1895, therefore, the limits of the two chief cities which afterwards became part of Greater New York were identical with those of New York and Kings counties respectively, and the limits of the two counties were the same as at present.

The third of the counties created in 1683—the county of Queens—comprised originally the whole northwestern corner of Long Island. It contained no cities until 1870, when Long Island City in the town of Newtown was incorporated.<sup>12</sup> In 1894 the whole western end of the county, including the towns of Newtown, Flushing and Jamaica, and part of the town of Hempstead, was asked to vote on the question of consolidation with New York City to form the present Greater New York,<sup>13</sup> and voted in favor of this proposal. The consolidation took place two years later.<sup>14</sup> At the end of another two years <sup>15</sup> all that part of the original Queens county which had *not* been made a part of New York City was separated from the portion which had, and was established as a new county—the county of Nassau. Queens county as it now exists, therefore, is wholly included within New York City.

The fourth county created in 1683—the county of Richmond—comprises to-day as it did originally only Staten Island. It has never contained any cities. Like Queens county, it became a part of Greater New York in 1896.

So much for the earlier boundaries of the various counties and cities comprised within Greater New York. Let us now consider briefly their governmental arrangements prior to the charter of 1897.

As we have seen, the city and county of New York were territorially identical from earliest times, and remained so after the annexations of territory in 1873 and 1895, and up to the formation of the

<sup>7</sup> L. 1854, Ch. 384.

<sup>8</sup> L. 1894, Ch. 356.

<sup>9</sup> L. 1894, Ch. 451.

<sup>10</sup> L. 1894, Ch. 449.

<sup>11</sup> L. 1894, Ch. 450; did not take effect until January 1st, 1896.

<sup>12</sup> L. 1870, Ch. 719.

<sup>13</sup> L. 1894, Ch. 64.

<sup>14</sup> L. 1896, Ch. 488.

<sup>15</sup> L. 1898, Ch. 588.

present city in 1896. It may have been partly owing to this fact that during the colonial period—and indeed up to 1857—the political existences of the county and the city were closely, not to say, inextricably, bound up with each other. The county received its organization and powers under the general laws of the colony and the state, and under various special acts passed from time to time; the city, under its successive charters—supplemented also during the nineteenth century by special acts of the legislature, at first infrequent but gradually increasing in number. The powers and duties conferred upon the two bodies, however, were to a large extent exercised by the same officers, and in many cases were none too clearly distinguished. Thus the sheriff of New York county was also the sheriff of New York City, and it was not always easy to tell in which capacity he was acting. Likewise it was provided in 1813<sup>16</sup> that the chamberlain of the city and county of New York should be considered the county treasurer, except as might otherwise be expressly provided—and this provision was continued in the Revised Statutes of 1827–1828. Of course, there came to be, in time, a number of county officers, like the county clerk, district attorney and county judge, who had nothing to do with the city government, and conversely many city officers who had nothing to do with county affairs; but, in general, the interlocking of county and city governments was very marked.

An act of June 19, 1703, in which provision was first made for the election by towns in the several counties of the state of boards of supervisors, expressly excepted from its application New York and Albany counties,<sup>17</sup> and conferred the powers—relating chiefly to local finances—which it elsewhere gave to these boards of supervisors, upon the common councils of the two cities. It was again provided in 1787<sup>18</sup> that the mayor, or the recorder, and the board of aldermen of New York City should be—and they were thereby declared to be—the board of supervisors of the city and county of New York, and should be so considered in all laws already made or thereafter to be made, except as otherwise expressly provided. This provision, virtually re-enacted in the Revised Statutes of 1827–1828, remained in force until 1857.

In that year<sup>19</sup> the mayor, or recorder, and aldermen were excluded from the board of supervisors, and provision was made for the election of twelve supervisors at large for the county of New York on a separate ticket—the legal existence of the board, however, being con-

<sup>16</sup> Act of April 9, § 151.

<sup>18</sup> Act of March 23, § 3.

<sup>17</sup> § 5.

<sup>19</sup> L. 1857, Ch. 490, as amended by L. 1858, Ch. 321.

tinued unbroken. From then on until 1874 the county government, though still more or less entangled with that of the city, was nevertheless more separate and independent than at any other period.<sup>20</sup>

In 1874<sup>21</sup> the governments of the city and county of New York were finally consolidated, but with the proviso<sup>22</sup> that nothing in the act contained should be construed to affect the election or appointment of county officers whose election or appointment was provided for in the constitution, or any other purposes for which the city and county of New York was recognized in the constitution as one of the counties of the state. (We shall see in a moment that the constitution still remains the only bar to a complete consolidation of the four county governments with that of the city.) Under this act of 1874 the powers of the board of supervisors of New York county were transferred to the board of aldermen of New York City.<sup>23</sup> This act remained in force until 1897.

In Kings county, as we have seen, the city of Brooklyn was not even incorporated until 1834, and did not become co-terminous with the county until 1894. Up to 1854, when Brooklyn absorbed the city of Williamsburgh and the town of Bushwick, the government of the county had differed very little from that of any average up-state county containing one or more large cities. The city took over most of the county functions within its own limits, but continued to elect county supervisors and to share in the management of county affairs. After 1854 the city and county governments became more closely inter-related, but it was not until 1895—after the formation of Greater New York had been virtually determined upon—that a consolidation, similar to that effected in New York county in 1874, finally took place.<sup>24</sup> At this time all the powers of the county board of supervisors were devolved upon the common council of the city. The offices of auditor and supervisor at large of Kings county were abolished, and their powers conferred upon the auditor and mayor, respectively, of the city of Brooklyn. The office of city treasurer was abolished and his powers given to the county treasurer. The county board of charities and corrections was also consolidated with the corresponding

<sup>20</sup> For interesting comment on the earlier relations of county and city government in New York City and county, see *People v. Edmonds*, 19 Barbour, 529, and *Baker v. the Mayor*, 9 Abbott, 82.

<sup>21</sup> L. 1874, Ch. 304.

<sup>22</sup> L. 1874, Ch. 305.

<sup>23</sup> §3.—Consol. Act of 1882, §§29 and 83.

<sup>24</sup> L. 1895, Ch. 954.

city board. This act contained, however, the same proviso as the New York county act of 1874—viz., that the election or appointment of the various constitutional county officers should not be deemed to be in any way affected.

Thus by 1895 the governments of New York and Kings counties had been consolidated, so far as the constitution would allow, with those of New York City and Brooklyn.

As to the governmental arrangements of Queens and Richmond counties prior to 1897, little need be said. The former contained one city of considerable size, Long Island City, but in neither county did the form of government differ materially from that of other counties throughout the state.

Before taking up the changes which were introduced by the Greater New York charter of 1897, and the few modifications which have since been effected, let us consider for a moment the main outlines of the form of government which is provided by the constitution and statutes for the majority of the counties of New York state, in order that we may gain, by comparison, a clearer conception of the peculiar status of the four metropolitan counties.

As in several of the middle Atlantic states, the general governing body of the county is the board of supervisors,<sup>25</sup> one member of which is elected from each town within the county, and one from each city or village, or from each ward of any city or village divided into wards. All the administrative and quasi-legislative powers of the county not expressly conferred upon some other county officer are exercised by the board of supervisors. These powers may conveniently be grouped under six heads, as follows:

1. Care of property and control of public works. This includes the construction and maintenance of county buildings, including a county laboratory, as well as of roads, paths, bridges, monuments, etc.

2. Financial functions, including the power to direct the raising of money to meet town and county charges, and the assessment and collection of state taxes; power to fix the salaries of various county officers when the same are not fixed by law; power to audit town and county accounts, to prescribe the form in which the same shall be kept and to preserve town and county records; power to borrow money and to pledge the credit of the county for bond issues, etc.

3. General ordinance-making powers, including the making of rules

<sup>25</sup> Const., Art. 3, §§26-27; Consolidated Laws of 1909, Ch. 11—the "County Law"; Art's. 2-7 incl.

governing county office hours, where the same are not fixed by law; the carrying out of the forest, fish and game law and further protection of fish and game; the destruction of noxious weeds and animals; the keeping of dogs, etc.

4. Powers as to boundaries of towns and other districts, including the establishment, alteration and division of towns, school commissioner districts, jury districts and fire districts.

5. Powers in relation to the administration of justice and to the matter of correction. These include the management of the county gaol, provision for the custody and maintenance therein, or in the gaol of another county, of delinquents and persons detained in civil cases, provision of local offices for judges of the court of appeals and of all necessities for other courts of record in the county, employment of a stenographer for the county court, etc.

6. Powers granted to assist in the enforcement of the foregoing powers and in the general enforcement of the law—*viz.*, the power to require the attendance of witnesses and to question them, or any county or town officer, as to county or town affairs; and the power to bring an action on the undertaking of any county officer.

In addition to the board of supervisors, the constitution provides<sup>26</sup> for the election in each county of a sheriff, a district-attorney and a county clerk, of a register of deeds in any county which wishes to have such an officer, and of a county judge (except in New York county) and surrogate.<sup>27</sup> In some counties the offices of county judge and surrogate are combined in one man; in others they are separate. In all counties except New York and Kings the sheriff, district-attorney, county clerk and register, if any, are to be elected for three-year terms—in New York and Kings for either two years or four years according as the legislature may prescribe. County judges and surrogates, except in New York county, are to be elected for six year terms. The legislature may provide for other county officers, either elective or appointive.<sup>28</sup>

So much for the constitutional provisions. In accordance with that last mentioned, the legislature has provided for the election, in each county outside of New York City, of a county treasurer and from one to four coroners, and for the election or appointment of one or more superintendents of the poor.<sup>29</sup> Any county which desires to do so is also allowed to elect a county comptroller, and to provide for a

<sup>26</sup> Art. X, §1; Cf. also the County Law.

<sup>27</sup> Const. Art. X, §2.

<sup>28</sup> Art. VI, §§14-15.

<sup>29</sup> County Law, Arts. 8, 10 and 13.



county auditor to be appointed by the board of supervisors; and a number of counties have availed themselves of this permission.<sup>30</sup>

In addition to these general provisions, applying to practically all the counties, the legislature has by special acts created a number of additional elective and appointive county officers in particular counties—notably in the county of Erie.

We are now in a position to understand more clearly the changes made in the government of the four metropolitan counties by the Greater New York charter of 1897.<sup>31</sup>

In the first place, all existing municipal or public corporations within the limits of the greater city, with the exception of the four counties, were abolished. Five new divisions for local municipal purposes, were, however, created—the five boroughs, *viz.*, Manhattan and the Bronx (identical in extent, respectively, with the early city and county of New York, and with the portion of Westchester annexed thereto), and of Brooklyn, Queens and Richmond (respectively identical in extent with the counties of Kings, Queens—as left in 1898—and Richmond). These borough divisions hardly concern us.

In the second place, virtually the same transfer of powers which had been made in 1874 and 1895, respectively, from the counties of New York and Kings to the cities of New York and Brooklyn was now made from these two cities, and from the counties of Queens and Richmond, to the new city of New York. All powers formerly exercised by boards of supervisors, or by municipal legislative bodies acting as such, were devolved either upon some purely administrative board or officer of the new city, or upon its board of aldermen acting in conjunction with the mayor and, usually, with the board of estimate and apportionment. Boards of supervisors—consisting for each county of the members of the board of aldermen elected within the county—were to remain in existence for but two purposes, *viz.*, to act as county boards of canvassers for all elections held within the county, and to divide the county, if the same were entitled to more than one assemblyman, into assembly districts.<sup>32</sup> Even this latter power seems to have been taken from the county boards of supervisors by the char-

<sup>30</sup> County Law, Arts. XIV-a, added by L. 1909, Ch. 466 as amended by L. 1910, Ch. 8, and XII-a, added by L. 1910, Ch. 152.

<sup>31</sup> L. 1897, Ch. 378; Cf. also the supplemental act relating to boards of supervisors in counties wholly within a city but not comprising all of such city. L. 1897, Ch. 380.

<sup>32</sup> L. 1897, Ch. 378, §1586; L. 1897, Ch. 380.

ter revision of 1901<sup>33</sup> and conferred upon the board of aldermen acting as a unit.<sup>34</sup>

As in the consolidation of New York City with New York county in 1874, and of Brooklyn with Kings county in 1895, so now in 1897, the constitution made it impossible to do away with certain elective county officers, or to consolidate their offices with the city government.<sup>35</sup> They were made subject, however, to the complete *financial* control of the city authorities. Moreover, all other elective county offices existing at that time in any of the four counties, as well as some appointive county offices, were abolished—either by the charter of 1897, or by amendments thereto up to, and including, the revision of 1901—and their duties transferred to various city officers.<sup>36</sup> Certain appointive county offices, such as commissioners of jurors, public administrators,<sup>37</sup> and commissioners of records in New York and Kings counties, were, however, left unchanged. It was further provided<sup>38</sup> that no city officer should hold any office under any of the four county governments.

With this brief summary of the changes accomplished between 1897 and the present time, it now remains for me to present, as briefly as possible, a somewhat more detailed and connected view of existing

<sup>33</sup> §1586.

<sup>34</sup> Certain special acts were passed between 1897 and 1903 relating to the powers of the board of supervisors of Queens county (L. 1897, Ch. 735; L. 1899, Chs. 74, 187 and 414; L. 1900, Ch. 20, and L. 1903, Ch. 155), but, except in so far as these acts postponed the complete taking effect of the general provisions mentioned in the text, they do not seem to have altered these provisions in any important respect. Certainly since the charter revision of 1901, at least, the supervisors of Queens county have been on exactly the same footing as those of the other three counties (L. 1901, Ch. 466, §1586).

<sup>35</sup> Const. Art. VI, §§14–15; Art. X, §1.

<sup>36</sup> The office of county treasurer was abolished in Richmond by the charter of 1897 (L. 1897, Ch. 378, §1587); in Queens by an act of 1899 (L. 1899, Ch. 433.—) and in Kings by the charter revision of 1901 (L. 1901, Ch. 466, §1587). In all three cases the powers of the office were devolved upon the city chamberlain of Greater New York. (L. 1903, Ch. 395.)

The functions of county superintendents of the poor in Queens and Richmond counties were handed over to the department of charities of New York City.

The office of county coroner was abolished and coroners were made thenceforth *borough*, instead of county, officers. (Charter, §§1570–1571.)

<sup>37</sup> The public administrator of New York City was made the public administrator of New York county. (Charter, §1585.)

<sup>38</sup> Charter, §1549.

arrangements, and, finally, to indicate, in a general way, the conclusions to which a study of the subject has led.

Let us take, first of all, the powers which we have cited as belonging to the board of supervisors of the average up-state county and see where, under the present scheme of government in Greater New York, these various powers are lodged.

By this process we shall be able to realize more clearly the extent to which the four county governments have been merged in that of the city.

The first of these powers—*viz.*, the care of county property and the construction and maintenance of public works—is divided in New York City among a large number of city authorities. For example, the board of estimate and apportionment and the board of aldermen exercise a general oversight over all city and county property, and have general charge also of the construction and maintenance of all the more important public works. Subject, however, to their financial control, to the ordinance-making power of the board of aldermen and to the general administrative control of the mayor, certain city departments, such as the department of bridges, the department of docks and ferries and the department of parks and playgrounds exercise the actual care of various kinds of city property. The care of the streets is divided between the street cleaning department, the department of water supply, gas and electricity and the several borough presidents; and public works in connection with the streets, such as paving, lighting, sewerage, etc., are under the control of the two authorities last named. Local improvements are initiated and authorized by the boards of twenty-five local improvement districts, subject to the approval of the board of estimate and apportionment (and, where the proportion of the total cost borne by the whole city is over \$500,000, to the approval of the board of aldermen as well). When so approved they are carried out by one of the borough presidents. In these local improvement boards we can see certain traces of the original county boards of supervisors and their functions. They are composed, for each local improvement district, of the aldermen elected within the district (usually three in number) and of the president of the borough within which the district is situated. In the borough and county of Richmond they practically amount to a county board of supervisors, for the whole county forms but one improvement district. In the other counties, however, their jurisdictions are smaller—Queens county being divided into two districts, Kings into nine and New York into thirteen. Each board has jurisdiction only

over those matters the costs or expenses of which are to be wholly or in part a charge on the people or property of its own district, but two or more boards may combine for an improvement affecting two or more districts.<sup>39</sup> Except in so far, however, as these local improvement boards, though legally city authorities, are in certain respects analogous to, and survivals of, the former county boards of supervisors, all powers elsewhere exercised by the counties with regard to *public works* are in New York exercised by the city government.

The same is true of the *financial* functions elsewhere exercised by counties. In the first place, the annual budget, for the four counties as well as for the city, is made up by the Board of Estimate and Apportionment, subject to the reduction or excision of any items of appropriation by the board of aldermen, which action by the board of aldermen is, in turn, subject to the veto power of the mayor. The charter provides specifically<sup>40</sup> that the board of estimate and apportionment shall "in addition to such other amounts as it may in its discretion provide for public purposes in the city of New York and the several counties wholly contained within its territorial limits, annually include in its final estimate the following sums, which shall annually be raised and appropriated: \* \* \* \* \* Sixth.—Such sum as may be necessary to pay the salaries of county officers within the counties of New York, Kings, Queens and Richmond, and likewise all other expenses within said counties and each of them which are county as distinguished from city charges and expenses." The other county expenses, outside of salaries, which are referred to in this section consist chiefly of (1) the running expenses of the several county offices and of the various county courts, including the supreme court within each judicial district;<sup>41</sup> (2) the cost of maintaining, at various state and city institutions for the care and relief of the blind, the deaf, the dumb and the feeble-minded, children whose homes are in the several counties in question;<sup>42</sup> and (3) miscellaneous items, chiefly connected with the administration of justice.<sup>43</sup>

<sup>39</sup> Charter, §§425-436.

<sup>40</sup> §230; Cf. also §226.

<sup>41</sup> New York county constitutes the first judicial district; Kings, Queens and Richmond counties, together with the other two counties on Long Island, Nassau and Suffolk, constitute the second judicial district.

<sup>42</sup> This expense is charged against these counties under the mandatory provisions of certain special state laws.

<sup>43</sup> Cf. the Budget for 1911, pp. 289-319, incl. The total expenses for all four counties for 1911 amounted to only \$5,453,805.25 out of a budget of \$174,079,335.16.

Likewise the fixing of the salaries of county officers, except in so far as these salaries are fixed by state law, is entrusted to "the board of aldermen on the recommendation of the board of estimate and apportionment."<sup>44</sup>

Another financial function of the average county which is performed for the counties within New York City by the city authorities is the levying and collection of taxes for county purposes, and the supervision of the assessment and collection of state taxes. The comptroller is required to include, in his annual statement to the board of aldermen of the amount required to be raised by taxation, a statement of the amount needed to pay the salaries of county officers and other county charges and expenses in the four counties; and the board of aldermen is authorized and directed to levy and collect such amount from the taxable property within each of said counties "to the end that each of said counties shall ultimately bear and pay all expenses necessary to be incurred within the county for county as distinguished from city purposes."<sup>45</sup> In order to comply with this last provision the expenses of each county are added to the general city expenses for the purpose of computing the tax rate within such county; and the tax rates of the different counties are consequently unequal.

Still another financial function of which the four metropolitan counties have been completely deprived is the power to borrow money and to pledge the property of the county as security. It was provided by the charter that the existing debts of Kings and Richmond counties, and a proportionate part of the debt of Queens county and the town of Hempstead, should become charges against the new city of New York, and that all future obligations should be issued or entered into by, and in the name of, the Corporation of the City of New York.<sup>46</sup> All existing laws as to the public debts of the municipal and other public corporations consolidated with the city of New York were to remain in force, but were to be carried out by the new city of New York. "All pledges, taxes, assessments, sinking funds and other revenues and securities provided by law for the payment of " these debts were to be "in good faith enforced, maintained and carried out by " the city of New York,<sup>47</sup> and the city sinking fund commissioners were to act as such for the sinking funds of all these former debts.<sup>48</sup> The counties also specifically prohibited by the charter<sup>49</sup> from becoming

<sup>44</sup> Charter, §§56, 1583.

<sup>45</sup> Charter, §902, Cf. also §§248-249.

<sup>46</sup> §4.

<sup>47</sup> Charter, §5.

<sup>48</sup> Charter, §204.

<sup>49</sup> §8.

indebted for any purpose. Since 1897, therefore, the corporate stock of New York City has been issued in the place of county bonds or bonds of any of the former public corporations within the greater city.<sup>50</sup>

Finally the comptroller of New York City, instead of the county board of supervisors, audits and controls the expenditures of the remaining county officers. The charter provides<sup>51</sup> that "all county charges and expenses and salaries of county officers in said counties and each of them shall be audited and paid by the department of finance out of the fund or appropriation applicable thereto, and the audit of said department in respect to such charges and expenses shall extend to the reasonableness thereof, and shall be, in all respects, as full and complete as the audit of city charges and expenses." The actual custody and handling of county money is performed, as we have seen, by the city chamberlain.

So much for the former financial powers of the metropolitan counties. Three other classes of county powers—*viz.*, ordinance-making powers, powers as to boundaries, and powers granted to assist in the carrying out of other powers—have, under the present arrangements, been handed over for the most part to the board of aldermen of New York City, subject in some cases to the mayor's veto. Some of these powers are also possessed, to a greater or less degree, by other boards and officers of the city government. The point which chiefly interests us, however, is that they are no longer possessed by the four counties.

Finally we come to the powers of the county in relation to the administration of justice. These powers, too, in so far as they are exercised in other counties by boards of supervisors, have, in New York City, been chiefly handed over to the board of estimate and apportionment and the board of aldermen. Thus, for example, it is the duty of these two bodies to make provision for the housing of the various courts and subordinate judicial officers, and to furnish them with such supplies as they may need. It is also their duty to provide for the care of all persons detained in the county gaols.

The actual administration of justice, however, and the subordinate administrative duties connected therewith, are, as was indicated at the beginning of this article, still in the hands of elective and appointive county officers, and constitute the only important county function now remaining—the sole *raison d'être*, one might say, of the four metropolitan counties. Let us glance briefly at the provisions gov-

<sup>50</sup> Charter, §170.

<sup>51</sup> §1583.

erning these county officers, in order that we may see how these provisions differ from those in force with respect to the other counties of the state.

In the first place, the various county officers of the four metropolitan counties are governed, to a very much larger degree than those of most of the other counties, by special acts of the legislature. Their salaries and duties, their assistants and employees, and the salaries, duties and office hours of these assistants and employees, are constantly being altered by the legislature, and differ considerably from those of similar officers in other counties. In New York county the county clerk,<sup>52</sup> district attorney<sup>53</sup> and register<sup>54</sup> are elected for four years, and the sheriff for two.<sup>55</sup> In Kings the district attorney is elected for four years and the sheriff, county clerk and register for two.<sup>56</sup> In Queens and Richmond the county clerk performs the duties of register of deeds, and, together with the sheriff and district attorney, is elected for three years—just as in the up-state counties.<sup>57</sup>

Most of the county officers within New York City are given fixed salaries, the principal exception being the sheriff of New York county who still continues to receive for his own use, in addition to a salary of \$12,000, one half of all the fees which he collects—a privilege which, it is estimated, nets him, together with his salary, a total compensation of upwards of \$50,000 a year.<sup>58</sup>

Coroners, as has already been stated, are no longer county officers in New York City, but are elected, under the provisions of the present charter,<sup>59</sup> by boroughs—four in Manhattan, two in the Bronx, two in Brooklyn, two in Queens and one in Richmond.

In Kings, Queens and Richmond counties the provisions with regard to the county courts are similar, on the whole, to those governing other counties throughout the state. In each of them a county

<sup>52</sup> L. 1897, Ch. 989.

<sup>53</sup> L. 1896, Ch. 888.

<sup>54</sup> L. 1897, Ch. 53.

<sup>55</sup> L. 1895, Ch. 826.

<sup>56</sup> L. 1896, Ch. 772; Cf. also *People v. Palmer*, 154 N. Y. 133, where it was held that, under the provisions of Art. X, § 1, of the Constitution, if the legislature did not fix the term of office of the county clerks, district attorneys, sheriffs and registers of New York and Kings counties at either two or four years, their term should be two years.

<sup>57</sup> Const. Art. X, § 1; also the County Law.

<sup>58</sup> L. 1890, Ch. 523, as amended.

<sup>59</sup> §§1570, 1571.

judge (in Kings there are two county judges) is elected for six years;<sup>60</sup> and in Kings and Queens a surrogate is also elected for six years.<sup>61</sup> In Richmond the county judge acts as surrogate. In New York county, on the other hand, the provisions as to the county courts differ rather markedly from those of other counties. In place of a county judge elected for six years there is a county court of general sessions composed of seven judges elected for fourteen years.<sup>62</sup> Two surrogates are elected for fourteen instead of for six years.<sup>63</sup> The salaries of all these judges within New York City are also higher than those up state.<sup>64</sup> These salaries, and the cost of running the courts, are county charges, but are paid, as we have seen, by city officers.

We see, then, that the merging of the four county governments in that of the city of New York has proceeded about as far as it can under the present provisions of the constitution. Any further consolidation will require a constitutional amendment, under which the remaining elective county officers may become either state or city officers, and may be appointed either by the mayor, by some other city authority, by the governor, or by the higher courts. There are few persons, I think, who will not agree that such a change is eminently desirable. Why should the county clerk and register of deeds be elected by the people if the commissioner of jurors and the public administrator may properly be appointed? And why should the sheriff and district attorney, whose duty it is to enforce *state* laws be elected by the voters of the county? It has recently been proposed that these two last-mentioned officers should be made appointive by the governor, who now has power under the constitution to remove them. It is further proposed that the county clerk and register should be appointed by the appellate division of the supreme court in each department.<sup>65</sup> As for the county judges, the mayor now appoints

<sup>60</sup> Const. Art. VI, §14; County Law, Art. 14.

<sup>61</sup> Const. Art. VI, §15; County Law, Art. 14.

<sup>62</sup> Const. Art. VI, §14; also L. 1907, Chs. 411-412. The old City Court of New York City as it existed prior to 1897 was merely continued by the Greater New York charter (§§1345-1346.). Its members are now elected only within New York county, but like the Municipal Court, the Board of City Magistrates and the Court of Special Sessions, it is legally a part of the *city* government, and not of the government of New York county.

<sup>63</sup> Const. Art. VI, §15.

<sup>64</sup> County Law, Art. 14, §232.

<sup>65</sup> Commissioners of jurors in New York and Kings counties are at present so appointed. (L. 1901, Ch. 602.)



the city magistrates and judges of the court of special sessions. There is no such fundamental difference between the functions of these courts and those of the county judges and the court of general sessions in New York county but that the mayor might safely be allowed to appoint these latter officers as well. The same is true of the surrogates. If these changes were made it would not be a far cry to the entire abolition of the counties within New York City—or their retention merely as electoral districts in case some of the judges were left elective. Such a change would not only shorten the local ballot but would probably result as well in some saving of expense to the tax payers of the city. It is to be hoped that, at the next constitutional convention, if not before, such action may be taken.